

MEMORANDUM OF UNDERSTANDING

among the

CALIFORNIA DEPARTMENT OF WATER RESOURCES,
CALIFORNIA DEPARTMENT OF FISH AND GAME,
BUREAU OF RECLAMATION,
UNITED STATES FISH AND WILDLIFE SERVICE,
UNITED STATES NATIONAL MARINE FISHERIES SERVICE,
CONTRA COSTA WATER DISTRICT,
EAST BAY MUNICIPAL UTILITY DISTRICT,
SANTA CLARA VALLEY WATER DISTRICT,
CITY AND COUNTY OF SAN FRANCISCO PUBLIC UTILITIES COMMISSION,
ALAMEDA COUNTY WATER DISTRICT,
ZONE 7 OF ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION
DISTRICT, AND
SAN FRANCISCO BAY AREA WATER USERS ASSOCIATION

regarding

CALFED BAY-DELTA PROGRAM STUDIES ON THE EXPANSION OF LOS VAQUEROS RESERVOIR

Pursuant to the CALFED Bay-Delta Programmatic Record of Decision for the Final Programmatic Environmental Impact Statement and Environmental Impact Report (hereafter, "ROD"), dated August 28, 2000, an agreement will be developed between several CALFED agencies including the California Department of Water Resources (hereafter, "DWR"), the California Department of Fish and Game (hereafter, "DFG"), Bureau of Reclamation (hereafter, "the Bureau"), U.S. Fish and Wildlife Service (hereafter, "USFWS"), and the National Marine Fisheries Service (hereafter, "NMFS"); the Contra Costa Water District (hereafter, "CCWD"); and other potential local partners for the completion of necessary studies related to the feasibility of an expanded Los Vaqueros Reservoir, consistent with the CALFED long-term comprehensive plan, including the solution principles and objectives.

Purpose: The purpose of this Memorandum of Understanding is to memorialize the mutual understanding of the Parties to this MOU as to how preliminary studies (feasibility study, environmental review, and preliminary design) concerning a potential expansion of Los Vaqueros Reservoir are to be carried out consistent with the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000. Potential later phases of an expansion of Los Vaqueros Reservoir, including final design, financing and construction, are not covered by this MOU.

It is hereby recognized through this MOU that:

1. water supply agencies in the Bay Area have different water sources and different water supply and quality concerns, as well as independent, ongoing programs and projects to address their respective water supply and quality concerns;
2. the CALFED ROD recognized that local agencies will continue to independently develop storage and other projects to meet local needs;
3. the CALFED ROD states that CALFED agencies will pursue identified complementary actions, which will help achieve CALFED goals and objectives;
4. the CALFED ROD identified as a complementary action of a Bay Area water quality and water supply reliability initiative called the Bay Area Blending/Exchange Project that would enable Bay Area water agencies to work cooperatively to address water quality and supply reliability concerns on a mutually beneficial and regionally focused basis;
5. the Bay Area Blending/Exchange Project will evaluate a range of potential changes to infrastructure and institutional arrangements to encourage a regional approach to specific components of water supply operations;
6. the CALFED ROD states that expanding water storage capacity is critical to the successful implementation of all aspects of the CALFED Program and, if strategically located, will provide much needed flexibility in the system to improve water quality and support fish restoration efforts;
7. the CALFED ROD identifies an expanded Los Vaqueros Reservoir as a surface storage project to be pursued with project-specific studies and as one potential component of the Bay Area Blending/Exchange Project;
8. the CALFED ROD committed to the identification of potential local partners and development of an agreement as needed for necessary studies with those partners for both the Bay Area Blending/Exchange project and for the expanded Los Vaqueros project. The date identified for the Bay Area Blending/Exchange project is July 2001 and the date for the expanded Los Vaqueros project was March 2001;
9. the ROD identified the following schedule for the expansion of Los Vaqueros Reservoir: initiation of feasibility studies and environmental review (July 2001); completion of feasibility studies (July 2002), completion of environmental review, documentation, and preliminary design on a selected alternative (end of 2003); and completion of final agreements with project

participants (mid-2004). The ROD identified the same schedule for the Bay Area Blending/Exchange project, and

10. the CALFED ROD committed to the establishment of a Permit Clearinghouse to coordinate and facilitate permit applications across all CALFED programs. This process is detailed in the Permit Clearinghouse MOU signed by various CALFED agencies.

1. Definitions

- (a) "Party" and "Parties" refer to the signatories to this MOU: DWR, DFG, the Bureau, USFWS, and NMFS; CCWD; and local interests represented by the East Bay Municipal Utility District, the Santa Clara Valley Water District, the Alameda County Water District, Zone 7 of Alameda County Flood Control and Water Conservation District, the City and County of San Francisco Public Utilities Commission, and the San Francisco Bay Area Water Users Association.
- (b) "Study" and "Studies" mean the investigation of an expansion of Los Vaqueros Reservoir pursuant to the ROD, including feasibility and environmental review, that will openly and objectively evaluate and discuss the relevant operational, environmental, cultural, engineering, financial, legal, institutional and outreach issues. Parties will use the results of these studies to determine if any of the Parties are interested in pursuing an expanded Los Vaqueros Reservoir.
- (c) "Environmental review" means the development and completion of necessary feasibility studies, analyses, and documents pursuant to National Environmental Protection Association, California Environmental Quality Act, California Endangered Species Act, Federal Endangered Species Act, Natural Community Conservation Planning Act, and other State and federal environmental laws.

2. Underlying Principles

- (a) Execution of this MOU for preliminary studies in no way implies support for or an obligation to approve, or participate financially or otherwise in an expansion of Los Vaqueros Reservoir.
- (b) Participation in this MOU and studies covered by this MOU is voluntary and any agency may withdraw at any time from this MOU by providing written notice to the other Parties. Participation in this MOU and related studies does not imply endorsement or commitment to implement the recommendations of the studies.

- (c) The preliminary studies will be carried out in an inclusive manner that encourages voluntary participation by the Parties executing this MOU as well as other interested persons or organizations.
- (d) Execution of this MOU is in no way intended to provide preferential treatment to an eventual Los Vaqueros Reservoir expansion project in obtaining authorization or funding to proceed to construction.
- (e) A separate MOU addressing a Bay Area regional water quality and supply reliability improvement effort, identified as the Bay Area Blending/Exchange project in the ROD (pg. 69), will address several potential projects, in addition to the potential expansion of Los Vaqueros Reservoir. Execution of this MOU is not intended to adversely affect work for the Bay Area regional effort or any other project that may be studied or proposed by a Bay Area agency as part of the Bay Area Blending/Exchange project or otherwise.
- (f) The commitments established in the ROD for this Study and the Bay Area Blending/Exchange project, which have parallel commitments for preliminary studies, shall guide the schedule of work. No alteration in commitment dates is contemplated for either effort in these preliminary studies.
- (g) Project elements of the studies should be designed to protect and enhance the environment consistent with overall CALFED ecosystem goals established in the ROD.
- (h) Execution of this MOU or participation in the activities contemplated by this MOU in no way waives any legal or contractual rights of participating Parties.
- (i) The governing boards of Bay Area water agency and water user association signatories will approve any final decisions related to their water rights, water contracts, integrated resource plans, and infrastructure resulting from this MOU or associated studies.
- (j) Execution of this MOU in no way limits the ability of water agency signatories to pursue individual projects or obtain separate federal and State funding.
- (k) Unmitigated adverse impacts upon users or customers of the Bay Area water agencies, or customers of the Bay Area water agencies, or imposition of new health risks upon customers is not an acceptable outcome of the studies. No agencies or their customers are obligated by this MOU to accept adverse impacts, mitigated or not.
- (l) The studies will include tasks to explore the necessary changes to the water rights held by CCWD and the Bureau (whose water rights permits include storage to the Los Vaqueros Reservoir) and DWR, and potential new water rights (such as increased diversion rates and storage quantities that add a

new water right priority date, or new appropriation of water), that would be necessary for an expansion of Los Vaqueros Reservoir. The purposes of this part of the studies are 1) to determine those parties who might be affected by such changes or new water rights so that those affected parties will be included in the CEQA/NEPA process and other outreach efforts at the earliest stages of the study, 2) to determine the process, documentation and permits that would be required for such changes or new water rights, 3) to determine the Scope of Work necessary to carry out these studies, 4) to explore the feasibility of such changes or new water rights (for example, the availability of surplus flows during periods when water quality and fish protection could be assured, the environmental impacts of such changes, the potential impacts to affected parties), and 5) to enable the permitting to proceed in a timely fashion should it eventually be determined that a project could and should proceed.

- (m) Characterization of water rights will be carried out with the Party holding the corresponding affected water right as the lead entity and with that Party's direct consultation and permission. Except to the extent that documentation of feasibility or unfeasibility may be necessary to comply with alternatives analysis required by State and federal environmental laws, changes to existing water rights held by the EBMUD, the SFPUC, or other parties will not be considered in the studies, and Mokelumne River water rights held by EBMUD, Tuolumne River water rights held by SFPUC, or water rights held by others will not be available to use for the Project, without the express consent of EBMUD, SFPUC, or of other water rights holders respectively. It is the Parties' belief that consideration of such rights without the consent of EBMUD, SFPUC, and/or other parties will likely be deemed an infeasible alternative for institutional reasons.
- (n) To the extent to which the studies explore or contemplate potential changes to water service contracts, or deliveries under those contracts, the Parties to the MOU who are parties to the contracts that would be changed shall reach agreement on how the contracts are characterized within the studies.
- (o) Any proposed interconnection between CCWD facilities and the facilities owned by another party will be addressed through separate agreements between DWR and the appropriate party that would cover the related environmental and feasibility studies regarding those facilities.
- (p) Any proposed re-operation between CCWD facilities and facilities owned by another party will be addressed through separate agreements between DWR and the appropriate party that would cover the related environmental and feasibility studies regarding those facilities.

3. Roles and Responsibilities of Parties

- (a) The Implementation MOU in the ROD identified DWR and the Bureau as co-program managers for the Water Storage Program that includes potential Los Vaqueros Reservoir expansion. For the purpose of this MOU, DWR and the Bureau will be co-program managers, and this MOU shall become effective upon its execution by DWR and CCWD.
- (b) The Bureau, as co-program manager under the CALFED ROD, will be the lead federal agency for NEPA compliance.
- (c) Either CCWD or DWR will be the State lead agency for the purposes of CEQA.
- (d) A separate agreement between CCWD and DWR addresses the details of how the preliminary studies will be funded. The Parties executing this MOU will not be required to financially contribute toward costs of these studies.
- (e) DWR, the Bureau, and CCWD are jointly responsible for the completion and management of the studies. These studies will be consistent with Section 2(m).
- (f) Phase 1 activities are ongoing at the date of execution of this MOU, pursuant to a contract between CCWD and DWR, dated January 1, 2001. Parties anticipate that a future agreement between CCWD and DWR will provide for the funding and management of further studies in accordance with the commitments outlined above. Before executing any such future agreement, DWR and CCWD shall furnish the proposed scope of work thereof to the Parties to this MOU for their review and comment.
- (g) DWR, the Bureau, CCWD and other Parties to this MOU will work cooperatively to develop a proposed purpose and need statement for the expansion of Los Vaqueros Reservoir. This effort will be coordinated with the Bay Area Blending/Exchange project to include alternatives involving Los Vaqueros Reservoir that are developed in the Bay Area Blending/Exchange project.
- (h) DWR, the Bureau, and other CALFED agencies, in conjunction with CCWD, are responsible for the additional commitments associated with the completion of these studies that are outlined in the ROD and in Section 3(f) of this MOU.
- (i) CCWD, DWR, and the Bureau shall insure that any tribes who may be affected by the potential expansion of Los Vaqueros Reservoir are involved early and fully in the studies consistent with the ROD.

- (j) Each water right holder or facility owner participating in the studies will be recognized as the lead entity for all matters pertaining to its water rights or facilities. This includes, but is not limited to characterizing water rights for any reports, discussing such rights with the State Water Resources Control Board, DWR, or the Bureau and/or coordinating with other parties about such rights or facilities.
- (k) When the studies are completed (as currently contemplated for July 2002) the Parties to this MOU will reevaluate their interest in any proposed Los Vaqueros Project expansion based on the contents of the studies, and may at that time decline to participate further or may desire to change the contents of this MOU, or proceed to final agreements regarding participation, if a project is identified.
- (l) As an existing reservoir operated by CCWD, the Los Vaqueros Reservoir is subject to a number of mandates and agreements. DWR and the Bureau will work with CCWD and interested stakeholders to assure that previous commitments, including local voter approval required for expansion, are respected.
- (m) The Parties to this MOU will establish a technical committee consisting of representatives from the Parties, including CALFED Bay-Delta Program staff in addition to staff from CALFED agencies, who will meet not less than three times per calendar year for the purposes of keeping other Parties informed, providing input, reviewing technical memoranda, and ensuring that interests and concerns are considered in the development of the studies. DWR, the Bureau and CCWD are responsible for distributing meeting materials and draft work products in a timely manner to interested parties and providing timely responses to concerns raised.
- (n) DWR and the Bureau, in cooperation with the CALFED Bay-Delta Program, intend to ensure that the concepts of adaptive management and best available science will be incorporated into the studies and into any eventual project should a project be approved.
- (o) The Parties to this MOU agree to provide data and other relevant information related to the completion of the studies in a timely fashion. Additionally, the Parties agree to participate in timely review and to provide comment on technical reports related to the completion of these studies. Such participation by any Party is subject to that Party's respective policy and legal direction, appropriations, authorization, and funding.
- (p) Each Party shall designate at least one representative who shall be the lead contact for the organization and who, together with designated alternates, shall attend meetings of the technical committee described in Section 3(m). However, this participation is subject to appropriations and funding.

- (q) Other CALFED agencies, especially those identified in the Implementation MOU as Program Support for the Storage Program, may participate in the studies identified by the ROD and this MOU by execution of this MOU. The Parties believe that the participation of USFWS, NMFS, and DFG will be particularly important as work under this MOU progresses.

4. Outreach Responsibilities of the Parties

- (a) CCWD, DWR, and the Bureau, in consultation with the CALFED Bay-Delta Program, will consult with nonparticipating CALFED Agencies and interested water users with respect to the results of the studies, subsequent agreements, and all other substantive matters related to the planning, construction and operation of an expanded Los Vaqueros Reservoir.
- (b) Each Party to this MOU is responsible for consulting with that Party's respective constituencies with respect to the terms and conditions of this MOU, the results of the studies, subsequent agreements, and all other substantive matters related to the planning of an expanded Los Vaqueros Reservoir.
- (c) In addition to CEQA and NEPA requirements, DWR, the Bureau, and CCWD shall ensure that regular public meetings occur to provide a forum for input in the studies from nonparticipating local and statewide interests and stakeholders, including but not limited to local environmental protection groups, environmental justice groups, recreational interests, in-Delta interests, Native American representatives, and the business community.
- (d) In addition to the technical committee identified in Section 3(m), the establishment of other stakeholder and technical committees, with entities not a party to this MOU, will be ensured by DWR, the Bureau, and CCWD.
- (e) Environmental Justice refers to the fair treatment of people of all races, cultures, and income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. CCWD, the Bureau, and DWR will be responsible for ensuring that these studies are conducted in a manner that promotes environmental justice and complies with relevant laws and regulations.

5. Funding and In-Kind Contributions

Funding for CALFED planning studies related to the expansion of Los Vaqueros Reservoir as outlined in the ROD will be provided by funds available to CALFED agencies as provided for in separate agreements. Future agreements shall also address how local monetary and "in-kind" contributions can be cost shared, subject to the availability of appropriations and funding.

6. Limitations of this MOU

- (a) Execution of this MOU does not in any way imply support for or an obligation to support, approve, or participate in an expansion of Los Vaqueros Reservoir. No Party to this MOU is bound to any financial contribution related to these studies or participation in this or a related project, except as might be otherwise provided in separate agreements.
- (b) Several issues could be identified in the course of these studies that are related to the expansion of Los Vaqueros Reservoir but are beyond the scope of this MOU. The CALFED agencies signatory to this MOU, in consultation with the CALFED Bay-Delta Program, will provide the process for resolution of these and other issues identified by the studies.

7. Contingent on Appropriation of Funds and Future Actions

- (a) United States: The expenditure or advance of any money or the performance of any obligations of the United States under this MOU shall be contingent upon appropriation or allotment of funds in accordance with 31 U.S.C. 1341 (Anti-Deficiency Act). No liability shall accrue to the United States for failure to perform any obligation under this MOU in the event that funds are not appropriated or allotted.
- (b) State of California: The commitments and obligations under this MOU of the State of California are subject to the availability of appropriated funds. No liability shall accrue to the State of California for failure to perform any obligations under this MOU in the event that funds are not appropriated.
- (c) Legal consistency: All provisions of this MOU are intended and shall be interpreted to be consistent with all applicable provisions of State and federal law.

8. Notices

All formal notices regarding the term of this MOU as detailed in Section 9 shall be sent to the following:

DWR:

Thomas M. Hannigan, Director
California Department of Water Resources
1416 Ninth Street, Room 1115-1
Sacramento, California 95814-5515

DFG: Robert C. Hight, Director
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, California 95814

the Bureau: Kirk Rodgers, Acting Director
Mid-Pacific Region, Bureau of Reclamation
U.S. Department of the Interior
2800 Cottage Way
Room East-1604, MP-100
Sacramento, California 95825-1898

USFWS: Wayne White, Field Supervisor
Sacramento Fish & Wildlife Office
U.S. Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825-1846

NMFS: Rebecca Lent, Ph.D. Regional Administrator
U.S. National Marine Fisheries Service
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

CCWD: Walter J. Bishop, General Manager
Contra Costa Water District
2300 Stanwell Drive
Concord, California 94524-2099

EBMUD: Dennis Diemer, General Manager
East Bay Municipal Utility District
375-11th Street, MS 808
Oakland, California 94607

SCVWD: Stan Williams, Chief Executive Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

ACWD: Paul Piraino, General Manager
Alameda County Water District
43885 S. Grimmer Boulevard
Fremont, California 94537

Zone 7 of Alameda County Flood
Control and Water Conservation
District:

Dale Myers, General Manager
Zone 7 of Alameda County Flood Control and Water
Conservation District
5997 Parkside Drive
Pleasanton, California 94588

SFPUC:

Lawrence T. Klein, Acting General Manager
San Francisco Public Utilities Commission
1155 Market Street, 4th Floor
San Francisco California 94102

San Francisco Bay Area Water
Users Association:

Art Jensen, General Manager
San Francisco Bay Area Water Users Association
155 Bovet Road, Suite 302
San Mateo, California 94402

CALFED:

Patrick Wright, Director
CALFED Bay-Delta Program
1416 Ninth Street, Room 1155
Sacramento, California 95814

9. Term

- (a) The following agencies enter into this MOU which will become effective upon its execution by DWR and CCWD. The Parties to this MOU will reevaluate their interest in the studies upon completion of studies (currently contemplated for July 2002) and may at that time decline to participate further or propose amendments to this MOU. Unless otherwise amended or affected by a CALFED long-term governance agreement or federal or State legislation, the MOU will expire on December 31, 2003 or whenever final agreements with project participants, as contemplated in the ROD, are executed, whichever comes first.
- (b) At any time, this MOU may be extended or amended by mutual, written agreement of the Parties.
- (c) At any time, any Party may withdraw from this MOU by simple written notice to the other Parties.
- (d) Any State, federal, or local governmental agency with jurisdiction over land, water or natural resources in California may become a party to this MOU by

executing a copy of this MOU. Such execution shall be by the agency's officers pursuant to authority conferred to do so by the governing body of the agency.

10. Counterparts

This MOU can be executed in counter parts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties here to have executed this Memorandum of Understanding.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Dated: JUN 13 2001

By 
Thomas M. Hanigan
Director

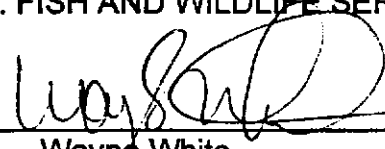
STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

Dated: 7-18-01

By 
Robert C. Hight
Director

U.S. FISH AND WILDLIFE SERVICE

Dated: 7/3/01

By 
Wayne White
State Supervisor

U.S. NATIONAL MARINE FISHERIES SERVICE

Dated: _____

By _____
Rebecca Lent, Ph.D.
Regional Administrator

CONTRA COSTA WATER DISTRICT

Dated: 6/28/01

By Walter J. Bishop
Walter J. Bishop
General Manager

SANTA CLARA VALLEY WATER DISTRICT

Dated: SEP 18 2001

By Stanley M. Williams
Stanley M. Williams
CEO/General Manager

ALAMEDA COUNTY WATER AGENCY

Dated: _____

By Paul Piraino
Paul Piraino
General Manager

ZONE 7 OF ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

Dated: July 19, 2001

By Dale Myers
Dale Myers
General Manager

CITY AND COUNTY OF SAN FRANCISCO PUBLIC
UTILITIES COMMISSION

Dated: 11/26/01

By Patricia E. Martel
Patricia E. Martel
General Manager

SAN FRANCISCO BAY AREA WATER USERS
ASSOCIATION

Dated: 6/25/01

By Art Jensen
Art Jensen
General Manager